IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Bail Appl..No. 7314 of 2007()

CRIME NO.1614/07 OF CENTRAL POLICE STATION, ERNAKULAM.

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PETITIONER/ACCUSED

MR.MATHEWS P.JOSEPH,
S/O.JOSEPH,AGED 29 YEARS
PARACKATTU HOUSE
ELAPPALLY VILLAGE, EDADUKARA
IDUKKI.

BY ADV. SRI.S.GOPAKUMARAN NAIR (SR.)
SRI.SOORAJ ELINJIKKAL T.

RESPONDENTS: COMPLAINANT

STATE OF KERALA THROUGH SUB INSPECTOR
OF POLICE, CENTRAL POLICE STATION,
ERNAKULAM REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7314 OF 2007

Dated this the 1st day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.376 of the IPC. The alleged victim – a woman, aged about 27 years, and the petitioner were colleagues working in an institution. They are both educated individuals. There was love lost between them and they did have sexual intercourse on two occasions. Obviously, parties had contemplated marriage also. The alleged sexual intercourse took place in April and May, 2007. The petitioner evidently ditched the woman and decided to get married to another lady on 20/10/07. The victim was deeply hurt. The petitioner is allegedly to have offered some untenable explanations to her to explain his decision to enter matrimony. Two days prior to the scheduled marriage, the victim allegedly

consumed over dose of crocin. She left a note in which she alleged that the petitioner was responsible for her death. She did not die. She was taken to the hospital and was saved. On the statement given by her, the crime was registered.

2. It is the case of the de facto complainant that she had been persuaded to consent to sexual relationship with the petitioner twice on the basis of the promise given by him that he shall marry her. He did not marry her and later offered an explanation that the woman who was going to marry was one of loose morals and that was only an arrangement of convenience and that the petitioner and the de facto complainant could continue their relationship. Investigation is in progress. The petitioner has already got married on 20/10/07. He apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the allegations are totally false and incorrect. Even if the entire allegations were accepted as gospel truth, what turns out is that the petitioner and the de facto complainant were in love and had voluntary sexual intercourse. Thereafter, the petitioner has breached his promise to marry her. This is all that turns out even if the entire allegations are accepted and these allegations cannot constitute the offence punishable under Sec.376 of the

IPC.

4. The learned counsel for the petitioner further submits that the version of the de facto complainant must be viewed with considerable amount of suspicion and reservation by this Court. She did not at all intend to commit suicide. Consumption of crocin in over dose to commit suicide is strange and perverse. Her motive and intention obviously was to disrupt the marriage which was scheduled to take place after two days. Vexatious allegations are raised. Consensual and voluntary sexual intercourse is now dubbed as rape. The petitioner may be saved of the undeserved trauma of arrest and incarceration, submits the learned counsel for the petitioner.

5. I shall not embark on any detailed discussions on merits about the acceptability of the allegations or I shall not attempt to render any value judgment on the conduct of the petitioner also. Suffice it to say that I find merit in the submission of the learned counsel for the petitioner that this is a fit case where the directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioner subject, of course, to appropriate and strict conditions which shall ensure the interests of a fair, efficient and expeditious investigation.

6. In the result, this petition is allowed. Following

directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 10/12/07. He shall be released on regular bail on his executing a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 5 p.m. on 11/12/07 and 12/12/07. During this period, the Investigating Officer shall be at liberty to interrogate the petitioner in custody and also got his potency test conducted. Thereafter the petitioner shall make himself available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 10/12/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.50,000/- without any sureties undertaking to appear before the learned Magistrate on 10/12/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge